

Supreme Court, U.S.
2 FILED

05-964 NOV 16 2005

NO. _____

OFFICE OF THE CLERK
IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2005

JOHN L. HENSS,
Petitioner

v.

IOWA ACCOUNTANCY EXAMINING BOARD,
Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF IOWA

PETITION FOR WRIT OF CERTIORARI

John L. Henss
Pro Se Petitioner
8980 Hickman Road, Suite 102
Clive, Iowa 50325
515-254-9959

QUESTION PRESENTED FOR REVIEW

The question is whether an administrative board can deprive a person of property in the complete absence of due process of law as guaranteed by Article V, Amendments to the Constitution of the United States.

TABLE OF CONTENTS

SUBJECT INDEX

	<u>Page</u>
Question Presented	i
Table of Contents	ii
Table of Authorities	iii
Table of Cases Cited	iv
Citations of Opinions and Orders Entered by Courts or Administrative Agencies	v
Jurisdiction	vi
Constitutional Provisions	2
Statement of Case	4
Reasons for Granting Writ	5
Conclusion	9
Certificate of Service	10
Appendix A Findings of Fact, Conclusions of Law, and Order of The Accountancy Examining Board of the State of Iowa	
Appendix B Ruling Dismissing Petition In The Iowa District Court For Polk County	
Appendix C Order Affirming District Court Ruling In The Court of Appeals of Iowa	
Appendix D Order Denying Further Review In The Supreme Court of Iowa	

TABLE OF AUTHORITIES

STATUTES

	<u>Page</u>
Amendment V., Constitution of the United States	2
Amendment XIV, Constitution of the United States	2
Employee Retirement Income Security Act	
Section 404(a)(2)	3,8
Section 407(d)(3)	8

OTHER

Webster's Dictionary	5
Code of Iowa	
Section 542C.21(2)(1993)	4

TABLE OF CASES CITED

	<u>Page</u>
<i>Anti-Fascist Committee v. McGrath</i> , 341 U.S. 128(1951)	6,10
<i>Collazo v. U.S.</i> , 1952, 196 F.2d 573, 90 U.S., 145, 21 L.Ed. 2d 301, rehearing denied, 89 S.Ct. 848, 393 U.S. 1121, 21 L.Ed. 2d 812	8,10
<i>Coatings, Corp. V. Continental Cas. Co.</i> , Puerto Rico, 1968, 89 S.Ct. 337, 393 U.S. 145, 21 L.Ed. 2d 301, rehearing denied, 89 S.Ct. 848, 393 U.S. 1121, 21 L.Ed. 2d 812	5
<i>Ex parte Wall</i> , 107 U.S. 265(1883)	6,7,9
<i>Martin v. Feilen</i> , 965 U.S. F.2d 660	8
<i>Morgan v. U.S.</i> , 304 U.S. 1 (1938)	6,7,9
<i>U.S. v. Dillman</i> , C.A. Tex. 1945, 146 F.2d 572, cert den. S.Ct. 1409, 325 U.S. 870, 89 L.Ed. 1989	7,10

**CITATIONS OF OPINIONS AND ORDERS ENTERED BY
COURTS OR ADMINISTRATIVE AGENCIES**

**DIA No. 94DOCAB-1 Case No., 89-28
Before the Accountancy Examining Board
of the State of Iowa**

Appendix A

**Henss v. Iowa Accountancy Examining
Board, Iowa District Court for Polk
County No. AA2984**

Appendix B

**Henss v. Iowa Accountancy Examining
Board, Court of Appeals of Iowa,
No. 5-336/04-1714**

Appendix C

**Henss v. Iowa Accountancy Examining
Board, Supreme Court of Iowa**

Appendix D

STATEMENT OF BASIS FOR JURISDICTION

The judgment of the Supreme Court of Iowa (Appendix D) was filed on August 25, 2005. The statutory provision believed to confer on this Court jurisdiction to review the judgment in question is section 1254 of Title 28 of the United States Code.

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 2005

NO. _____

JOHN L. HENSS
Petitioner,

v.

IOWA ACCOUNTANCY EXAMINING BOARD,
Respondent.

PETITIONER FOR WRIT OF CERTIORARI TO THE SUPREME
COURT OF IOWA

To the Honorable Chief Justices and Associate Justice of the
Supreme Court of the United States.

John L. Henss, the Petitioner herein, prays that a writ of certiorari
issue to review the Order Denying Further Review filed in the above
entitled case on August 25, 2005.

CONSTITUTIONAL PROVISIONS

Amendment V to the Constitution of the United States is involved and provides as follows:

“No person shall be held to answer for a capital, or otherwise, infamous crime unless on a presentment or indictment of a Grand Jury except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

Employee Retirement Income Security Act section 404(a) is involved and provides as follows:

“(a)(1) Subject to sections 403(c) and (d), 4042 and 4044, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and –

“(A) for the exclusive purpose of:

“(i) providing benefits to participants and their beneficiaries; and

“(ii) defraying reasonable expenses of administering the plan;

“(B) with care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims;

“(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

“(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title and title IV.

“(2) In the case of an eligible individual account plan (as defined in section 407(d)(3), the diversification requirement of paragraph (1)(C) and the prudence requirement (only to the extent that it requires diversification) of paragraph (1)(B) is not violated by acquisition or holding of qualifying employer real property or qualifying employer securities (as defined in sections 407(d)(4) and (5)).”

STATEMENT OF THE CASE

The Accountancy Examining Board of the State of Iowa had original jurisdiction of this case. That Board ruled that, "The preponderance of the evidence established that the Respondent violated Iowa Code section 542C.21(2)(1993), dishonesty and/or gross negligence in the practice of public accounting, as defined by 193A IAC 11.3(3) and 11.4(1), when he was enjoined by the United States Court of Appeals for the Eighth Circuit from acting as a service provider to any ERISA plan..." Appendix A-8

The Accountancy Examining Board further wrote, "The Eighth Circuit specifically found: '...ESOP fiduciaries accept a concurrent responsibility to act prudently on behalf of the plan's beneficiaries. For Henss to believe otherwise...demonstrates such a fundamental' misunderstanding of the ERISA statute...as to require that he have no further opportunity to subvert this important federal law.'" Appendix. A-8

The Iowa District Court for Polk County wrote, "In the petitioner's brief and argument he raises only two issues: 1. Whether petitioner's certificate was revoked in accordance with due process following a contested case hearing. 2. The board (Respondent) erred in its findings that the decision of the Eighth Circuit provides substantial evidence to support the action taken by the Board." Appendix B-1

The Court of Appeals of Iowa wrote "...no due process... issues were raised before the agency during either the contested case hearing or through on application for rehearing, and therefore those issues were not preserved for judicial review." Appendix C-5

The Supreme Court of Iowa wrote, "After consideration by this court en banc, further review of the above captioned case is denied." Appendix D-1

REASONS FOR GRANTING WRIT

This case originated when the Iowa Accountancy Examining Board, through its administrator, filed a vague and non-specific statement of charges. The Board's counsel offered to settle the matter if Henss would agree to a one month suspension of his license to practice public accounting in Iowa and pay a fine of \$1,000. The statement of charges included an accusation of dishonesty which the Board refused to withdraw. Henss desired to answer and refute that charge so the matter went to hearing.

At the hearing Henss asked the complainant, "Dishonesty has also been charged, but there are no specifications. Would you give the Court the specifications of that charge, please?" The witness made no response but counsel for the Board stated, "Well, the State will stipulate there's no definition of the term dishonesty in the administrative rules. The term speaks for itself." The administrative law judge states, "The state stipulates there's no definition of dishonesty. The Board, in their discretion, apply what that means in the context of their statutes and rules?" Counsel: "Yes". Despite the Board's thinking that there is "no definition of dishonesty" Webster demonstrates otherwise. In the New International Dictionary that term is defined as "want of honesty, probity, or integrity in principle; want of fairness and straightforwardness; a disposition to defraud, deceive, or betray; faithlessness." When one is accused of all of those faults surely due process requires that he be furnished with the specifications of those charges and given the opportunity to refute them. Dishonesty is an absolute, i.e., either one is honest or he is dishonest, there is no middle ground. No one is kind of honest or somewhat honest. The Board further stated, "...the Board is convinced that the Respondent has repeatedly lied to them..." Still there are no specifications of such charge. In *Coatings Corp. v. Continental Cas. Co.*, Puerto Rico, 1968, 89 S.Ct. 337, 393 U.S. 145, 21 L.Ed 2d 301, rehearing denied, 89 S.Ct. 848, 393 U.S. 1112, 21 L.Ed. 2d 812 this Court ruled that any tribunal permitted by law to try cases and controversies must not only be unbiased but must avoid even appearance of bias. When the Board refuses to provide any specifications of its charge of dishonesty and when it says Henss has "repeatedly lied" to them, again with no specifications this is not only bias, it is libel of the highest degree.